

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND**

AO NO. 02-

PROPOSED Administrative General Order Establishing Procedures for Filing,
Signing, Maintaining,
and Verifying Pleadings and Other Documents in the
Electronic Case Filing (ECF) System

Dated:

December____, 2002

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ADMINISTRATIVE PROCEDURES

I. REGISTRATION FOR THE ELECTRONIC CASE FILING SYSTEM

A. Terms

1. “CM/ECF System” or “System” refers to the Court’s Case Management/Electronic Case Files system that receives documents filed in electronic form.
2. “Filing User” refers to those who have a court-issued log-in and password to file documents electronically.
3. “Notice of Electronic Filing” refers to the notice automatically generated by the CM/ECF System each time a docket event is entered or a document is filed.

B. Designation of Cases

All cases filed after **March 3, 2003** will be part of the Court’s CM/ECF System. All petitions, motions, memoranda of law, or other pleadings and documents required to be filed must be electronically filed except as expressly provided and in circumstances where the Filing User is prevented from filing electronically, i.e., CM/ECF System failure. Notwithstanding the foregoing, attorneys and others who are not Filing Users in the CM/ECF System are not required to electronically file pleadings and other papers.

C. Passwords

Attorneys admitted to the bar of this Court (including those admitted pro hac vice), United States trustees and their assistants, private trustees, and others as the Court deems appropriate, shall be entitled to one System password to permit the attorney to participate in the electronic retrieval and filing of pleadings and other papers in accordance with the System. Registration for a password is governed by paragraph I(D). No Filing User shall permit his/her password to be utilized by anyone other than himself/herself or an authorized employee. A Filing User shall immediately notify the Clerk by telephone and by facsimile if they learn that their password has been compromised. Filing Users may be subject to sanctions for failure to comply with this provision.

D. Registration

1. A registration form, in the form attached hereto as Form A, shall be submitted for each Filing User. Filing Users shall be required to provide authorization for credit card payment with their registration in order to receive a login and password. *See* Form B attached hereto. It is anticipated that once the system is operational, an Application for Limited Use will be available to those who desire to use the system for a limited purpose that does not involve the payment of any filing fees, such as filing proofs of claim. *See* Form C attached hereto.

2. All registration forms shall be returned to the United States Bankruptcy Court, District of Rhode Island, Attn. Kristen Batty, Chair of the External Training Committee, 380 Westminster Mall, Providence, R.I. 02903.

3. After successful completion of the Court's training program, or certification by the Clerk in circumstances where completion of the Court's training program is not warranted, each Filing User will receive a System password.

4. The password required to submit documents to the System serves as the Filing User's original signature on all electronic documents filed with the Court. The password also serves as a signature for purposes of Fed. R. Bankr. P. 9011, other Federal Rules of Bankruptcy Procedure, the local rules of this Court, and any other purpose for which a signature is required in connection with proceedings before this Court. Electronically filed documents must include a signature block that sets forth the name, address, telephone number, and the attorney's bar registration number. In addition, the name of the Filing User under whose log-in and password the document is submitted must be preceded by an "/s/" and typed in the space where the signature would otherwise appear.

5. Participation in the System by receipt of a password from the Court shall constitute a request for service and notice electronically pursuant to Fed. R. Bankr. P. 9036. Filing Users, by receiving a password from the Court, agree to receive notice and service by electronic means and registration as a Filing User constitutes: (a) waiver of the right to receive notice by first class or certified mail and consent to receive notice electronically; and (b) waiver of the right to

service by personal service, first class or certified mail and consent to electronic service, except with regard to service of a summons and complaint under Fed. R. Bankr. P. 7004. Waiver of service and notice by first class or certified mail applies to notice of the entry of an order or judgment under Fed. R. Bankr. P. 9022.

6. Once registered, an attorney/participant may withdraw as a Filing User in the System by providing the Clerk of Court with written notice of such withdrawal. Copies of the written notice must also be provided to all registered attorneys/participants who have appeared in a case in which the withdrawing attorney/participant has appeared, and which case remains open at the time of withdrawal. Upon receipt, the Office of the Clerk will immediately cancel the attorney/participant's password and will delete the attorney/participant from any applicable electronic service list.

7. The Court reserves the right to revoke a Filing User's password and, therefore, his or her authority and ability to electronically file documents, for failure to comply with any provision of the agreement contained in the Filing User's Registration Form, failure to adequately protect his or her password, failure to comply with the provisions of these Administrative Procedures for Electronically Filed Cases, failure to pay fees required for documents filed electronically, other misuse of the System, or as a sanction ordered by the Court after notice and opportunity for hearing.

II. ELECTRONIC FILING AND SERVICE

A. Filing

1. Except as expressly provided in subparagraphs II(C) and in paragraph III below, all documents shall be filed electronically. Notwithstanding the foregoing, parties and attorneys who are not participants in the System are not required to electronically file pleadings and other papers in a case.

2. All documents that form part of a pleading and that are being filed at the same time and by the same party may be electronically filed together under one document number. Documents that are a part of the pleading, e.g. a memorandum of law, a supporting affidavit, or an appendix, shall be filed as an attachment to the pleading.

3. Because the System is a “real-time” system, the receipt of filing will show the actual date and time a document was filed on the System. Documents submitted electronically on the System outside of normal office hours will be deemed filed on the date and time received. For example, if a document is received at 7:30 p.m. on September 13, 2002, the receipt of filing will show that date and time, and the document will be deemed filed as of that date and time. Deadlines will not change as a result of this policy. The deadline for filing, unless otherwise specifically set, is midnight of the due date (E.S.T.).

4. The Filing User must designate a title for the document by selecting the appropriate event title from the categories provided in the System. Once a document is submitted and becomes part of the case docket, corrections to the docket are made only by the Clerk’s Office.

5. Filing Users seeking to file emergency motions or other expedited matters shall contact the Clerk’s Office by telephone at (401) 528-4477, Extension 14, immediately after filing such motion. Failure to notify the Clerk’s Office of such filing within one hour of the time stated on the Notice of Filing, may result in denial of the request for expedited or emergency relief.

B. Consequence of Electronic Filing

1. Electronic transmission of a document to the CM/ECF system or the docketing of an event on the System consistent with these rules, together with the transmission of a Notice of Electronic Filing from the Court, constitutes filing of the document for all purposes of the Federal Rules of Bankruptcy Procedure and the local rules of this Court, and constitutes entry of the document or event on the docket kept by the clerk under Fed. R. Bankr. P. 5003.

2. When a document has been either filed electronically, filed conventionally and subsequently imaged, or an event docketed electronically, the official record is the electronic recording of the document as stored by the Court, and the filing party is bound by the document as filed or event docketed.

C. System Failure

In instances where a document must be filed or event docketed immediately, but electronic filing cannot be accessed because of a System failure during normal business hours, the filing party shall, after making at least two attempts to file electronically, contact the Clerk's office to confirm that the System is not accessible. If it is confirmed that the System is not accessible, or, if the System cannot be accessed due to a System failure during non-business hours, the document or event shall be sent as an attachment in PDF format via e-mail to the following address: **cmecf@rib.uscourts.gov**. The filing party must file with the document an affidavit stating the reason(s) why the document is being filed via e-mail, and demonstrating compliance with the prerequisites of this subparagraph. Filers who experience a System failure and file documents via e-mail must call the Clerk's office prior to 10:00 a.m. of the next business day to inform them that a document has been filed via e-mail. The Clerk's office will download and file the PDF document, and the document will be deemed filed on the date and time of the e-mail transmittal. Nothing contained in this paragraph is intended to take away rights contained elsewhere in these procedures or in local or federal rules.

D. Service

1. Whenever a document is filed electronically in accordance with the electronic filing procedures, the System will automatically generate a "Notice of Electronic Filing" at the time of docketing and the notice will be automatically sent to all parties in the case who are registered users of the System.

2. If the recipient of notice or service is a registered attorney/participant in the System and if service upon that attorney/participant is permitted by first class mail under applicable bankruptcy rules, the Notice of Electronic Filing automatically generated by the System and sent to the attorney/participant shall be the equivalent of service of the document by first class mail, postage prepaid.

3. The Filing User shall serve the document with a copy of the Notice of Electronic Filing upon all other persons entitled to notice or service in accordance with the applicable rules who are not participants in the System.

4. Certificates of Service

Whether service of documents is on registered attorneys/participants in compliance with subparagraph II(D)(2) above, or on non-registered parties/attorneys in compliance with local and federal rules, a certificate of service is still required for all filings. The certificate must state the manner in which service or notice was accomplished on each party so entitled, and must be filed by the Filing User within two business days following their receipt of the Notice of Electronic Filing provided by the System at the time of filing. **Failure to timely file the Certificate of Service will result in the automatic denial of the motion/application or striking of the objection/response, as applicable.** Sample language for a certificate of service is attached to these procedures as Form D.

5. Nothing contained herein shall be construed to eliminate the necessity of service of the summons and complaint in accordance with the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure. The return of service shall be filed electronically.

E. Signatures Other than the Filing Users'

1. The Original Petition, Schedules, and Statements

In addition to the electronically filed version of these documents, the Filing user must also conventionally file a paper copy of the Declaration Regarding Electronic Filing, R.I. Local Bankr. Form P.3 (attached hereto), which contains the debtor's and counsel's actual signatures under oath. The Declaration must be filed with the Court within fifteen (15) days from the date stated on the Notice of Electronic Filing. The Declaration Regarding Electronic Filing must: (a) be signed under oath; and (b) have attached to it, a copy of the Notice of Electronic Filing for that document which includes the electronic document stamp.

2. All other documents requiring original signatures, such as amended schedules, lists, statements, pleadings, affidavits, and documents requiring verification under Fed. R. Bankr. P. 1008, or an unsworn declaration as provided in 28 U.S.C. § 1746, shall be filed electronically and the Filing User shall also conventionally file a paper copy of the Declaration Regarding Electronic Filing, R.I. Local Bankr. Form P.4 (attached hereto) with the Court within fifteen (15) days from the date stated on the Notice of Electronic Filing. The Declaration Regarding Electronic Filing must: (a) be signed under

oath; and (b) have attached to it, a copy of the Notice of Electronic Filing for that document which includes the electronic document stamp.

3. As part of the Clerk's duty to maintain records, the Clerk shall retain chronologically all Declarations Regarding Electronic Filing that are filed with the Court in accordance with existing document retention policies.

4. Stipulations/ Joint Motions:

In the case of a stipulation, a joint motion, or other document to be signed by two or more persons, the following procedure shall be used:

a. The Filing User shall initially confirm that the content of the document is acceptable to all persons required to sign the document, and *shall obtain and have in his or her possession* the signatures of all parties on the document.

b. The Filing User shall then file the document electronically, indicating the signatories, e.g. "/s/ Jane Doe," "/s/ John Doe," etc.

c. The Filing User shall retain the paper copy of the document containing the signatures for a period of one year after the case is closed.

5. Non-Registered and Pro Se Filers

Petitions, lists, schedules, statements, amendments, pleadings, affidavits, and other documents which must contain original signatures, or which require verification under Fed. R. Bankr. P. 1008, or an unsworn declaration as provided in 28 U.S.C. § 1746, must be filed in paper form with full signature. These documents will be scanned so they may be filed electronically in the System and filers may be required to scan these documents at the Clerk's office on equipment provided by the Court for public use. The original document will be maintained chronologically by the Clerk's office in accordance with existing document retention policies.

F. Fees Payable to the Clerk

For filings that require a fee, *Filing Users'* credit cards then on file shall be charged pursuant to information provided during training.

G. Exhibits

1. Exhibits authorized to be filed under Local Bankruptcy Court Rules, including but not limited to leases, notes, and the like, which are not available in electronic form, shall be submitted to the Court in paper format only. The Clerk's office will indicate on the electronic docket the date such exhibits were submitted and link them to the Joint Pre-Trial Order if appropriate. Trial exhibits will not be scanned by the Court unless the Court deems that doing so will assist in managing the trial.

2. Exhibits to Proofs of Claim

Exhibits in support of a proof of claim shall be filed electronically whenever possible and shall be docketed as one event with the proof of claim. The exhibits should be electronically imaged (i.e. scanned) and filed in PDF format as an attachment to the proof of claim.

H. Appeals

The appellee and appellant shall be responsible for printing any items required to be included in the record on appeal pursuant to Fed. R. Bankr. P. 8006.

III. CONVENTIONAL FILING OF SEALED DOCUMENTS

A motion to file documents under seal shall be filed electronically without attaching the documents that are the subject of the motion. Contemporaneously with filing the motion to file documents under seal, the Filing User shall conventionally file, in paper format, the documents sought to be placed under seal with the Court for its review. If the motion to file under seal is granted, the related documents will be maintained by the Clerk's office under seal until further order.

IV. ORDERS

A. Proposed Orders

1. In all cases where a Filing User is required to submit a proposed order under R.I. LBR 9072-1, all such orders shall be electronically filed, docketed, and served in accordance with these procedures and Rule 9072-1.

2. A Filing User wishing to supply the Court with a proposed order before hearing, may file such orders with the underlying motion or application which shall be docketed as one event, with the proposed order being filed as an attachment to the underlying motion or application.

B. Consent Orders/ Reaffirmation Agreements

A Filing User seeking to file a consent order or reaffirmation agreement shall conform to the standards set forth in Paragraph II(E)(4).

C. Notice of Court Orders and Judgments by the Court

1. Immediately upon the entry of an order or judgment in an action assigned to the CM/ECF System, the System will automatically generate to all Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed. R. Bankr. P. 9022. The clerk must give notice to a person who has not consented to electronic service in paper form in accordance with the Federal Rules of Bankruptcy Procedure.

2. All orders signed electronically (i.e. “/s/_____”) shall have the same force and effect as conventionally signed orders.

V. PUBLIC ACCESS TO THE SYSTEM DOCKET BY NON FILING USERS

A. Internet Access

Internet access to the System is not available without a PACER login and password. A PACER login and password can be secured by contacting the PACER Service Center to establish an account. Registration may be made online at <http://pacer.psc.uscourts.gov> or by calling the PACER Service Center at (800) 676-6856. Such access to the System will allow retrieval of the docket sheet and documents. Access to the System will be on a “read only” basis.

B. Public Access at the Court

The public will have electronic access at the Clerk's Office during regular business hours for viewing the docket sheet and documents filed in the System.

C. Conventional Copies and Certified Copies

Conventional and certified copies of electronically filed documents may be purchased at the Clerk's Office during regular business hours. The fee for copying and certification will be in accordance with the provisions of 28 U.S.C. § 1930.